

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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EDWARD MASELLI

v.

THOMAS DURDEN, ET AL

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19-cv-1248-AJ  
May 3, 2022  
11:00 a.m.

TRANSCRIPT OF FINAL PRETRIAL CONFERENCE/MOTION HEARING  
BEFORE THE HONORABLE ANDREA K. JOHNSTONE

APPEARANCES:

For the Plaintiff:

Sven D. Wiberg, Esq.  
Wiberg Law Office

For the Defendants:

Brian J.S. Cullen, Esq.  
Jonathan W. Shirley, Esq.  
Cullen, Collimore & Shirley, PLLC

Court Reporter:

Susan M. Bateman, RPR, CRR  
Official Court Reporter  
United States District Court  
55 Pleasant Street  
Concord, NH 03301  
(603) 225-1453

1 P R O C E E D I N G S

2 THE CLERK: Court is in session and has for  
3 consideration a motion hearing in Edward Maselli versus  
4 Durden, et al., civil case number 19-cv-1248-AJ.

5 THE COURT: Okay. Good morning everyone.

6 We have a couple of different things that prompted  
7 me to get everyone together this morning before we take up the  
8 various motions I hope that we can cover.

9 What I'm going to ask us to do is identify  
10 ourselves for the record starting with counsel for the  
11 plaintiff, please.

12 MR. WIBERG: Attorney Sven Wiberg for Edward  
13 Maselli.

14 MR. CULLEN: Good morning, your Honor.

15 Brian Cullen here on behalf of the defendants, and  
16 with me is John Shirley.

17 MR. SHIRLEY: Good morning.

18 THE COURT: All right. Thank you very much.

19 Good morning everyone.

20 I would like to begin by talking through document  
21 No. 34 which was filed by the defendants. It's a motion to  
22 substitute an exhibit, and I understand that in the  
23 plaintiff's expert report there is a full name reference to an  
24 individual who accused Mr. Maselli of some misconduct.

25 What I understand is that there's an assented to

1 agreement to have that document substituted with something  
2 referencing initials, but what I wanted to address with folks  
3 is that it appears that that exhibit is elsewhere in the  
4 docket. I don't know if counsel have had a chance to talk  
5 about that and if there's some modification to the request  
6 that the Court should be made aware of or if we need to talk  
7 about that further.

8 MR. WIBERG: Yeah, I need to put on the record  
9 upfront that I probably shouldn't be doing this today. I'm in  
10 the front room of my -- the first floor of my house. I  
11 haven't been in my office for I think a month, and I am right  
12 now essentially hospitalized at home. I have visiting nurses  
13 coming to help me take care of myself. I obviously have my  
14 wife, who is also my office manager, aiding me, but I am on  
15 very serious pain killers which I don't like. I don't like to  
16 take medications, and especially opioid pain killers, but when  
17 I've tried to cut back -- I'm in excruciating pain if I wait  
18 more than four or five hours between doses.

19 I was admitted to the hospital on an emergency  
20 basis on April 12th and had surgery, major surgery with  
21 general anesthesia on April 19th. I was released home on  
22 April 26th, but I am extremely restricted. I have constant  
23 pain, and I have very little resources.

24 I have tried as hard as possible to keep up with my  
25 cases, and I have to thank my wife, my office manager, Trish,

1 for helping me with that. But as far as doing any major work,  
2 it has been difficult next to impossible.

3 I filed a few things in this case but only because,  
4 like I say, with the help of my wife and my desire not to  
5 prejudice my client's case.

6 I am also working on extensive sleep deficit. For  
7 instance, I got about two hours' sleep last night and then had  
8 to wake up because of the pain and take additional pain  
9 killers.

10 This problem arose as a surprise in late February  
11 and early March. I was supposed to have this surgery back in  
12 mid March, and I did go in and have the beginning of this  
13 surgery, an angiogram which was supposed to proceed to the  
14 corrective measures mid March, but there was some screw-ups  
15 and some problems with surgeons' schedules.

16 THE COURT: Mr. Wiberg, I don't need all of those  
17 details, sir. What I appreciate is -- what is it that you're  
18 asking for?

19 MR. WIBERG: I'm just saying that I --

20 THE COURT: Are you asking for us to consider  
21 rescheduling today's proceeding?

22 MR. WIBERG: I think that's probably appropriate,  
23 Judge.

24 And also I want to put everybody on notice that  
25 it's likely that I will be moving to withdraw from the case

1 not for any reasons related to my present medical situation,  
2 because that should be much better within a couple of weeks.  
3 I will have my stitches out this week and will -- I really,  
4 except for the pain problems, will be able to function at full  
5 capacity.

6 THE COURT: Attorney Wiberg, I understand that  
7 you're saying that you don't think today is the day that you  
8 should be proceeding with today's hearing.

9 Attorney Cullen, do you wish to be heard?

10 MR. CULLEN: No, your Honor. Well, briefly, your  
11 Honor.

12 You know, I'm not unsympathetic to plaintiff's  
13 counsel's position. He does seem like he's able to give a  
14 pretty detailed history of his ailments. I don't want to  
15 belabor the delay. I have concerns for my clients.

16 This case has been around for a long, long time.  
17 And, you know, as I've mentioned in the papers, John Yurcak is  
18 retired. The others don't seem like they're close to  
19 retirement. But these issues date back to 2018 -- 2016  
20 rather, and it's a case that needs to find a way to go  
21 forward.

22 THE COURT: Yep. All right. So here's what I  
23 would like to do.

24 Attorney Wiberg, I understand that you may be  
25 filing motions that may have you no longer participating in

1 this case, but there are a number of things that the Court  
2 needs to do.

3           So what I propose is that the parties meet and  
4 confer about the issue that the Court has raised as it relates  
5 to the motion to substitute exhibit. If the parties could  
6 simply make sure that we have some kind of an understanding  
7 and agreement as to what, if any, additional documents might  
8 be in the record that include the same concerns that, Attorney  
9 Cullen, you've raised as it relates to the exhibit that you've  
10 attached to one of your motions. I just don't want to miss  
11 anything. It doesn't make any sense for us to substitute the  
12 exhibit in one place and not in others.

13           And if the parties also have an agreement or  
14 stipulation as to how they intend to refer to that individual  
15 going forward, if you could just update the Court on that.  
16 That's I think somewhat of a housekeeping issue that we can  
17 probably address and that Attorney Wiberg is probably up to  
18 addressing.

19           The other matters as they relate to setting a trial  
20 date and the motions in limine, I'm happy to continue that. I  
21 think you should also confer about whether the June date that  
22 the Court suggested works for everyone. If it does, you can  
23 let me know that as well, and I'm happy to postpone a further  
24 case management conference.

25           Attorney Wiberg, should we tentatively try to do

1 that in the next week or so? I understand that you may be  
2 making some changes yourself or proposing some changes, but I  
3 don't want to delay things unnecessarily. I am sensitive to  
4 trying to keep this case on track.

5 MR. WIBERG: Judge, like I say, just sitting here  
6 -- I'm not supposed to have my legs down. I've propped up my  
7 legs so --

8 THE COURT: All right. Well, we're all done.

9 MR. WIBERG: So it's very difficult.

10 I appreciate your sympathy and empathy, but I -- if  
11 I can pull my mind together here, I think the most essential  
12 issue would be my continuing in the case.

13 THE COURT: Okay.

14 MR. WIBERG: Mr. Maselli is entitled to his trial.  
15 He has survived summary judgment for some matters. We have  
16 great disagreements about many things in the case.

17 I don't know whether he's going to be able to  
18 afford -- I think I was the only attorney he could find who  
19 would take the case.

20 THE COURT: All right. I don't think we need to  
21 get into all of that.

22 Why don't we do this. I'm going to propose that we  
23 continue today's proceeding beyond the things we've talked  
24 about already to May 19th. And, as I said, I will -- I'll  
25 issue something in writing, Attorney Wiberg, so that you'll

1 have that and your office manager will have it.

2 And, Attorney Cullen and Attorney Shirley, if you  
3 would kindly try to follow up with Attorney Wiberg informally  
4 about the two things that I've raised?

5 MR. CULLEN: Yes, your Honor.

6 MR. SHIRLEY: Okay.

7 THE COURT: All right.

8 MR. WIBERG: Judge, I do have things scheduled on  
9 the 19th. So I don't know if another date might be more  
10 appropriate.

11 THE COURT: All right. How about the afternoon of  
12 Friday the 20th?

13 MR. WIBERG: That would be fine. It's wide open.

14 THE COURT: All right. I'll have my case manager  
15 look at some times and we'll try to go for that date.

16 All right. Attorney Wiberg, I hope you continue to  
17 do well, and I thank you all for your time today.

18 MR. WIBERG: Thank you.

19 MR. CULLEN: Your Honor, just to be clear, will we  
20 be expecting a resolution on the counsel issue by that May  
21 20th date or --

22 THE COURT: I don't know. It's not clear to me.  
23 It sounds like Attorney Wiberg is still consulting with his  
24 client.

25 MR. WIBERG: Yes.



1 MR. CULLEN: I didn't know, your Honor, if I need  
2 to keep that June date, but I guess we'll find out.

3 THE COURT: I would like us to have a conference as  
4 to whether that June date is feasible, and certainly I would  
5 encourage us to try to continue to work towards that as the  
6 trial period --

7 MR. CULLEN: I noticed that technically you haven't  
8 actually allowed the motion to continue the trial because you  
9 were waiting for a certificate. So I assume that will be  
10 granted tonight because I have it down for the 17th.

11 THE COURT: Yes. I think that's true. I have that  
12 certificate now.

13 Again, what I'm really interested in is if for some  
14 reason that date is not feasible for folks, I need to hear  
15 about that.

16 MR. CULLEN: Thank you.

17 THE COURT: Thank you.

18 All right. We're adjourned. Thank you.

19 MR. SHIRLEY: Thank you, your Honor.

20 (Conclusion of hearing at 11:11 a.m.)  
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## C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 5-24-22

/s/ Susan M. Bateman  
SUSAN M. BATEMAN, RPR, CRR